

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

**CASE NO. 23-81174-CIV-CANNON/McCabe**

**FERNAN LUGONES,**

Plaintiff,

v.

**RANGER CONSTRUCTION  
INDUSTRIES, INC.,**

Defendant.

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**ORDER ACCEPTING MAGISTRATE JUDGE’S  
REPORT AND RECOMMENDATIONS**

**THIS CAUSE** comes before the Court upon the Report and Recommendation issued by Magistrate Judge McCabe [ECF No. 12] on Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint [ECF No. 8]. The Report recommends that Defendant’s Motion to Dismiss be granted, because Plaintiff has not plausibly alleged a “disability” within the meaning of the Americans with Disabilities Act (“ADA”) and applicable regulations and other authorities [ECF No. 12 pp. 4–5 (concluding that Plaintiff’s allegation of suffering a “toenail injury that prevented him for working for only three days” do not plausibly qualify as a cognizable “disability”)]. The Report further recommends that dismissal be without prejudice, because the Court has not previously issued a ruling on any version of Plaintiff’s claims [ECF No. 12 p. 6]. Plaintiff timely objected to the substantive recommendation in the Report on the question of disability, but Plaintiff does not object to the Report insofar as it permits repleading [ECF No. 13].

### LEGAL STANDARD

To challenge the findings and recommendations of a magistrate judge, a party must file specific written objections identifying the portions of the proposed findings and recommendation to which objection is made. *See* Fed. R. Civ. P. 72(b)(3); *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989); *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006). A district court reviews de novo those portions of the report to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1).

### DISCUSSION


The Court has conducted a *de novo* review of the Report [ECF No. 12], Defendant's Objections [ECF No. 13], and the full record. *See Williams v. McNeil*, 557 F.3d 1287, 1291 (11th Cir. 2009) (citing 28 U.S.C. § 636(b)(1)). Upon review, and being fully advised in the premises, the Court finds the Report to be well reasoned and correct on the present record.

Accordingly, it is **ORDERED and ADJUDGED** as follows:

1. The Report and Recommendation [ECF No. 12] is **ACCEPTED**.
2. Defendant's Motion to Dismiss [ECF No. 8] is **GRANTED**.
3. Plaintiff's Amended Complaint is **DISMISSED WITHOUT PREJUDICE**.
4. Consistent with the Report and Recommendation, Plaintiff is permitted **one final opportunity** to file a Second Amended Complaint that sufficiently alleges a "disability" within the meaning of the ADA in accordance with the now-adopted Report and applicable pleading standards.
5. Plaintiff shall file a Second Amended Complaint on or before **January 25, 2024**.

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**DONE AND ORDERED** in Chambers at Fort Pierce, Florida this 8th day of January  
2024.



**AILEEN M. CANNON**  
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record